IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.3380 OF 2005

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.

Court's or Judge's orders

Mr. Rajan Salvi, for the Petitioner
Mr. S.M. Oak, for Respondent.

CORAM : S.A.BOBDE, J.
DATED : 21ST JUNE, 2005

P.C.

. The petitioner, who is a defendant in Respondent's suit for a right of way has challenged the concurrent finding of both Courts below granting temporary mandatory injunction to the Respondent. The Courts below have found that the Respondent has no other access to his property at Plot No.5A except through the Defendant's adjoining property at Plot No.5B and 6. The Courts have, therefore, directed the petitioner to remove the fencing of coconut leaves to allow the Plaintiff-Respondent to have the right of way.

2. Even before this Court the petitioner has not been able to point out

alternate right of way. In the circumstances prima facie there is a clear easement of necessity in Respondent's favour. Petition rejected. The injunction does not in any way allow the Respondent to alter the nature of the property and there is no reason to assume that the Respondent will do so.

(S.A. BOBDE, J.)